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July 3, 1962
Letter Opinion No. 62-73-L
R-344

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: Honorable Charles N. Ronan
Maricopa County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. Where a partnership makes application for a person to person transfer of a liquor license to the partnership, must all of the partners join in the application?

2. In order to withdraw the application or to request continuances of hearing, etc., must all of the partners join in such action?

CONCLUSIONS: 1. Yes.
2. Yes.

The following Sections of the Arizona Revised Statutes are applicable:

Section 4-201A (as amended laws, 1961).

"A person desiring a license to manufacture, sell or deal in spirituous liquors shall make application therefor to the superintendent on a form prescribed and furnished by the superintendent."

Section 4-101(8) (as amended laws, 1961).

"'Person' includes partnership, association, company or corporation, as well as a natural person."

Section 4-202 (as amended laws, 1961) provides for qualifications of licensees as follows:

"A. . . . If a partnership, each partner shall be a citizen of the United States and a bona fide resident of the state. . . ."

"D. No license shall be issued or renewed to any person who, within one year prior to application therefor, has violated any provision of a spirituous liquor license theretofore issued or has had a license revoked, or, within five years, has been convicted of a felony involving moral turpitude. . . ."

Section 4-203A (as amended, 1961) provides that:

"A. The superintendent shall issue a spirituous liquor license only after satisfactory showing of the

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capability, qualifications and reliability of the applicant. . . ."

"D. A spirituous liquor license, other than a club license, a hotel-motel license and a restaurant license, may be transferred to a person qualified to be a licensee, provided such transfer includes a bona fide bulk sale of the entire business and stock in trade. All transfers shall meet the requirements of original applications." (Emphasis supplied).

From the above statutory citations, it seems quite apparent that each member of a partnership must submit an application in order that the superintendent may consider the personal qualifications of each member of the partnership, and this is true whether the application is for an original issuance or for a person to person transfer of the license.

In answer to the second question, there seems to be a scarcity of law regarding withdrawals of partnership applications for licenses. In 68 C.J.S. Partnership, Section 214(a) on the subject of a partnership bringing a legal action, we note the following language, on page 692:

"In an action brought by two equal partners on a right belonging to the firm, neither has a right to enter a retraxit for the firm without the express consent of the other. So, too, an action brought by the partnership as a legal entity on notes belonging to the partnership can be dismissed only by the partnership, and certain partners purporting to act for the partnership cannot dismiss the action unless authorized to do so, especially where the copartnership would be prejudiced by a dismissal."

It appears to us that the same principle would apply in an application for a liquor license; that all partners would have to join in the withdrawal of a partnership application.


To further support this position, we note that in the case of Kalastro v. Superior Court, 83 Arizona 316, 320 Pacific 2nd, 946, at page 948, the Arizona Supreme Court stated:

". . . We have recently held that neither the superintendent nor the court on an appeal from the action of the superintendent concerning the validity of a person to person transfer of a liquor license has any jurisdiction to determine the property rights therein. Siler v. Superior Court, 83 Ariz. 49, 316 Pacific 2nd 296."

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From this holding it would appear to us that even if one of the partners desired to withdraw the liquor license application on the grounds that the partners no longer held a joint interest in the license applied for, if this matter is disputed by the other partner then neither the superintendent nor the court nor the city council nor the board of supervisors would have any jurisdiction to determine the question of property right. Such property right of necessity, would have to be determined in a separate civil action. It is therefore our opinion that a liquor license application may not be withdrawn without the express consent of all partners.


ROBERT W. PICKRELL
The Attorney General

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